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EXAMINER

MALAMUD, DEBORAH LESLIE

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/509,416
Filing Date: September 24, 2004
Appellant(s): LAUTER ET AL.

Michael J. Corrigan and Anthony M. Del Zoppo, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 27 October 2008 and 16 February 2009
appealing from the Office action mailed 11 April 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,891,044	GOLOSARSKY et al	4-1999
5,307,818	SEGALOWITZ	5-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what constitutes a high priority alarm and what prior art elements do or do not fall within the bounds of this limitation.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golasarsky et al (U.S. 5,891,044) in view of Segalowitz (U.S. 5,307,818). Regarding claims 1 and 6, Golasarsky teaches conditioning and interpreting circuitry (82 and 300), a real-time evaluator (300), histogram analysis (col. 6, line 60 – col. 7, line 12) and alarm generator (300). Golasarsky further discloses (col. 3, lines 58-61) and col. 4, lines 15-18) the use of ECG electrodes.
5. Moreover, Segalowitz teaches encoder (196 and 198; Figures 8-9) including ECG sensors (v1-v6).
6. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the invention of Golasarsky in view of Segalowitz by adding the electrodes of Segalowitz to the watchband of Golasarsky in order to acquire the ECG data as is suggested in Golasarsky (col. 2 lines 39-55), and therefore provide cardiac data for analysis of a patient status and future diagnosis.
7. Regarding claims 2 and 7, Golasarsky further teaches an RF link (col. 14, lines 36-47) and a motion sensor (col. 8, lines 14-20).
8. Regarding claims 3-5, Segalowitz further teaches the ECG sensors are in an elastic belt (Fig 23), wiring (371) integrated into the belt stretching together with said belt.
9. Regarding claims 8-10, Golasarsky and Segalowitz further teach continuous data acquisition (Segalowitz col. 9, lines 4-23), data processing (Golasarsky col. 10, line 66 – col. 11, line 24), performing a classification (Golasarsky col. 10 line 66 – col. 11, line 24) and generating an alarm (Golasarsky col. 11, lines 39-43).

(10) Response to Argument

A. The Rejection of Claim 9 under 35 U.S.C. 112

Appellant's arguments, with respect to the rejection of claim 9 under 35 U.S.C. 112, second paragraph have been fully considered and are persuasive. The rejection of claim 9 under 35 U.S.C. 112, second paragraph, has been withdrawn.

B. The Rejection of Claims 1-10 under 35 U.S.C. 103(a)

Claims 1-7

1. Appellant's arguments have been fully considered but they are not persuasive. Appellant argues (page 8) "if the conductive elements V1- V6 of Segalowitz were to be added to the watchband in Golasarsky as the Office has proposed, the conductive elements V1- V6 of Segalowitz could not obtain patient heart data (via ECG sensors) as is required by claim 1. In order to acquire the patient heart data, the conductive elements V1- V6 must contact the skin of the patient in a location suitable to detect heart signals. One such location has been found to be the patient's precordium. The additional conductive elements must also be in contact with the patient's skin at other selected points on the patient's body. In Segalowitz, the precordial strip having the six conductive elements V1- V6 is placed over the precordium of the patient for this reason. If the conductive elements V1- V6 of Segalowitz were to be added to the wrist module of Golasarsky, the conductive elements V1- V6 would not be positioned on the patient in a

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location suitable to obtain the required patient heart data. The patient's wrist is not a suitable location to detect heart signals.”

2. The Examiner respectfully disagrees with this assessment of the prior art of record. As an initial matter, and as stated above, Golasarsky's system is compatible with, and indeed refers to, the use of ECG electrodes for gathering patient heart data. Therefore, the modification of Golasarsky's system with Segalowitz's ECG sensors is well within the scope of the prior art. Furthermore, though Segalowitz's system states the use of precordial electrodes, there is nothing in the structure of these electrodes that prohibits their use on the wrist, as in Golasarsky's system. Both Golasarsky and Segalowitz teach the use of external electrodes for measurement of patient heart signals. The specific location of these electrodes is a mere recitation of intended use, and does not limit the electrodes structurally from being used elsewhere. Therefore it is reasonable to modify Golasarsky's device with elements from Segalowitz.

3. The Appellant further argues "Moreover, Golasarsky does not teach or suggest acquiring patient heart data as the Office contends (col. 2, lines 39-55). As previously discussed, Golasarsky discloses detecting a user's stress state with a SOS time interval sensor 80 positioned in a module strapped to the user's wrist. The SOS time interval sensor 80 senses changes in pressure between Time Intervals in successive heart beats. The Time Interval data is not the same as ECG data.” The Examiner believes that the response above applies here, and again notes that Golasarsky's system includes sensors for measurement of ECG signals in addition to, and in conjunction with, the SOS time interval noted by the Applicant.

Claims 8-10

The Examiner believes that the arguments above pertain to these claims. No further arguments are provided by the Appellant regarding these claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Deborah L. Malamud/
Examiner, Art Unit 3766

Conferees:

/Carl H. Layno/

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